

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 632
Title 14, California Code of Regulations
Re: Stewarts Point State Marine Reserve

- I. Date of Initial Statement of Reasons: November 4, 2010
- II. Date of Pre-adoption Statement of Reasons: N/A
- III. Date of Final Statement of Reasons: March 14, 2011
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: September 16, 2010
Location: McClellan, California
 - (b) Discussion Hearing: Date: December 16, 2010
Location: Santa Barbara, California
 - (c) Adoption Hearing: Date: February 3, 2011
Location: Sacramento, California
- V. Update:

One of the coordinates for Salt Point State Marine Conservation Area was listed incorrectly in the existing regulatory text shown in the Initial Statement of Reasons and in the two previous emergency rulemaking files. That coordinate has been corrected to match the regulatory text as adopted in OAL File 2010-0413-02SR. No other modifications were made to the originally proposed language of the Initial Statement of Reasons.

At its February 3, 2011 meeting, the California Fish and Game Commission (Commission) adopted the regulations as proposed.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:
 - (1) Oral testimony by Paul Hobi and Jenn Eckerle given on December 16, 2010, and letter from Kaitlin Gaffney and Karen Garrison received on December 16, 2010:
 - a. They support the proposed regulation change.
 - b. They support the extension of the Emergency Rule until new regulations are finalized.

Response:

- a. Support noted.
- b. Support noted.

(2) Oral and written testimony by Scott Williams given on February 3, 2011:

- a. Supports the proposed regulation change.
- b. Expressed thanks to the Commission and Department of Fish and Game staff for regulations work to accommodate the Kashia Band of Pomo Indians.

Response:

- a. Support noted.
- b. Comment noted.

(3) Oral testimony by Kaitlin Gaffney given on February 3, 2011:

- a. Expressed thanks to the Commission and Department of Fish and Game staff for regulations work to accommodate the Kashia Band of Pomo Indians.

Response:

- a. Comment noted.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

None.

(b) No Change Alternative:

The no change alternative would allow the emergency action to expire on April 19, 2011, at which time the area in question would

revert to the initial definition of the Stewarts Point State Marine Reserve in state waters of the north central coast, with no provision for the Stewarts Point State Marine Conservation Area. The no-change alternative would not address the issues and concerns raised by the Kashia Band of Pomo Indians.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulation has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation affects approximately 25 square nautical miles. The impacts are anticipated to be minor.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Any additional costs to State agencies for enforcement, monitoring, and management of marine protected areas are difficult to estimate and depend on not only the impacts of the proposed regulation but also other regulations and processes.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to Be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

Updated Informative Digest / Policy Statement Overview

On June 24, 2010 the California Fish and Game Commission (Commission) adopted Emergency Regulations for the Stewarts Point State Marine Reserve (SMR). **The Emergency Regulations were readopted by the Commission on December 16, 2010 for an additional 90 days.** The adoption of these regulations was based on public support and tribal request. After working to adhere to Department of Fish and Game (Department) feasibility guidance and working with other non-government organizations, the Kashia Band of Pomo Indians of the Stewarts Point Rancheria developed a proposal that would allow access to traditional subsistence and ceremonial locations that had previously been incorporated into the Stewarts Point SMR, a no-take marine protected area (MPA).

The Kashia Band of Pomo Indians proposal requested that the no-take Stewarts Point SMR be modified so that a section of the shoreline would become a State Marine Conservation Area (SMCA) that allowed for recreational take (Table 1). Their proposed boundary ran from the mean high tide line out to a distance of 300 feet. However, in order to meet previous Department design feasibility guidance on designing MPAs, the Commission opted to extend the offshore boundary out to a line that approximates 1000 feet. Even though these modifications allowed for an SMCA to occur within an area that was previously a no-take reserve, there was no overall change to the connectivity of the MPA network. This was achieved because the original Stewarts Point SMR exceeded minimum size guidelines for connectivity as outlined by the Master Plan Science Advisory Team (SAT). However, it should be noted that the level of protection for the modified SMCA was reduced from very high to low due to the allowed recreational take for all users.

Table 1. Adopted regulations for the Stewarts Point SMR/SMCA complex.

MPA Name	Allowed Take	SAT Level of Protection
Stewarts Point State Marine Reserve	Take of all living marine resources is prohibited	Very High
Stewarts Point State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT the recreational take from shore only of marine aquatic plants other than sea palm, marine invertebrates, finfish by hook and line, surf smelt by beach net, and species authorized in Section 28.80 of these regulations by hand-held dip net.	Low

At its February 3, 2011 meeting, the Commission adopted the regulations as proposed. One of the coordinates for Salt Point State Marine Conservation Area was listed incorrectly in the existing regulatory text shown in the Initial Statement of Reasons and in the two previous emergency rulemaking files. That coordinate has been corrected to match the regulatory text as adopted in OAL File 2010-0413-02SR. No other modifications were made to the originally proposed language of the Initial Statement of Reasons.

